

STATE OF MICHIGAN
COURT OF APPEALS

ROY N. DIETZ,

Plaintiff-Appellee,

v

DALE R. DIETZ,

Defendant-Appellant.

UNPUBLISHED

July 3, 2001

No. 221922

Wayne Circuit Court

LC No. 97-711762-CZ

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's order, upon a finding of fraud, rescinding rather than reforming a conveyance of real property. We affirm.

In 1994, plaintiff, defendant's father, signed a deed conveying an interest in his house in Redford Township to defendant. Relying on defendant's advice and initiatives, plaintiff thought he was granting defendant a remainder interest in the property while reserving a life estate to himself. But the deed in fact established a joint tenancy with full rights of survivorship. Plaintiff and defendant resided together at the home for a time, but frictions developed and plaintiff asked defendant to move. Only then did plaintiff realize that the conveyance of record did not reflect his intentions.

The trial court concluded that defendant had exercised undue influence in the course of fraudulently inducing plaintiff to make the conveyance, then requested arguments on the proper remedy. Plaintiff requested rescission of the deed, while defendant asked that the deed be reformed to reflect plaintiff's original intention. The court ruled that defendant had unclean hands in the matter and, accordingly, eschewed reformation and wholly voided the transaction.

When reviewing a trial court's decision in a matter of equity, this Court reviews the conclusion de novo, but reviews the supporting findings of fact for clear error. *Michigan Nat'l Bank & Trust Co v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). In this appeal, none of the trial court's factual findings are in dispute, so we are left with a pure question of law.

The sole issue on appeal is whether the trial court erred in applying the doctrine of unclean hands and ordering rescission of the conveyance instead of reformation. The court's opinion and order includes the following:

The Defendant in this case made misrepresentations to the Plaintiff to induce the execution of the Quit Claim Deed. The Defendant now requests this Honorable Court to use its equitable powers to reform the Deed which was executed due to Defendant's fraud. The Defendant does not come to this Court with clean hands, and therefore cannot benefit from the Court's equitable powers. . . . Consequently, it is the Court's opinion that the Quit Claim Deed executed by Plaintiff to Defendant is void and canceled.

Defendant suggests that the court thus ruled that reformation is never appropriate in cases of fraud. We, however, read the court's opinion as properly reflecting the principle that the election of equitable remedies in cases of fraud is the prerogative of the innocent party, not the guilty one.

It is well-established that both rescission and reformation are among the equitable tools available to a court when remedying a fraudulently-induced conveyance. See, e.g., *Ferd L. Alpert Industries, Inc v Oakland Metal Stamping Co*, 379 Mich 272, 276; 150 NW2d 765 (1967), and *Hawkins v Dillman*, 268 Mich 483, 488; 256 NW 492 (1934). Reformation, or the judicial rewriting of a document, is proper where the defrauded party wishes to emerge with the actual agreement that the defrauded party had intended to execute. See Dobbs, *Law of Remedies* (2d ed, 1993 abridged), p 716. Rescission is appropriate where the defrauded party wishes instead to return to his original condition. *Id.* Either way, it is the innocent plaintiff, not the defrauding defendant, who may choose from among available remedies. *Id.* at 712.

The doctrine of unclean hands highlights the impropriety of allowing the party who has perpetuated a fraud to preserve some of the benefits of that fraud by way of reformation where the plaintiff wishes for rescission. The doctrine "“closes the doors of a court of equity to one tainted with inequity or bad faith relative to the matter in which he seeks relief”" *Attorney General v Ankersen*, 148 Mich App 524, 544-545; 385 NW2d 658 (1986), quoting *Stachnik v Winkel*, 394 Mich 375, 382; 230 NW2d 529 (1975). The doctrine of unclean hands, as applied by the trial court in this instance, comports with, and underscores, the principle that the victim, not the offender, has the election of available equitable remedies.

We affirm.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey